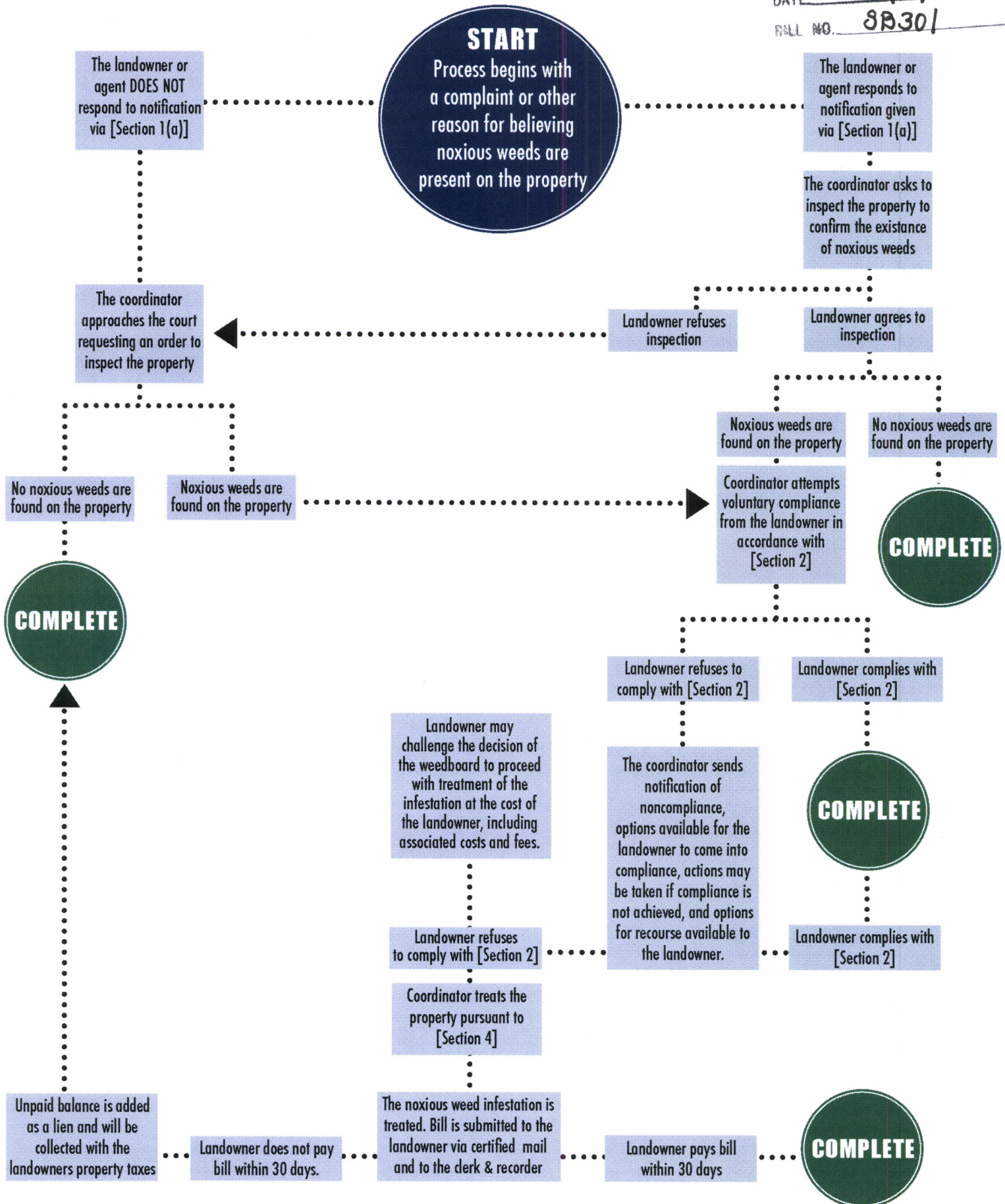


# SB 301: Noncompliance Process

SENATE NO. 2  
DATE 2/19/13  
BILL NO. SB 301

# MWCA ORIGINAL NONCOMPLIANCE STATUTES

## **7-22-2123. Procedure in case of noncompliance -- notice.**

(1) (a) Whenever a complaint has been made or the board has reason to believe that noxious weeds described in this part are present upon a landowner's land within the district, the board shall attempt informal resolution of the complaint or alleged presence of noxious weeds by notifying the landowner by mail or telephone. If the situation is not resolved after the initial mail or telephone contact, the board may request inspection of the land by sending the request by certified mail at least 10 days after the initial contact is attempted.

(b) If the landowner has an agent for service on file with the secretary of state, the notice must be given by mail to the registered agent. The landowner or the landowner's representative shall respond to the notice within 10 days.

(c) If the board or the board's agent and the landowner or landowner's representative agree to an inspection, the board or the board's agent and the landowner or the landowner's representative shall inspect the land at an agreeable time. The inspection must occur within 10 days after the agreed-upon inspection date. If within 10 days after sending a certified letter to the address listed on the tax records for the property or the agent of service the board is unable to determine the owner of the property or the landowner objects to the inspection, the board or the board's agent may seek a court order to enter and inspect the land to determine if noxious weeds are present on the property.

### (2)

(a) (i) If the board or the board's agent finds noxious weeds on the property as a result of the inspection, the board or the board's agent shall notify the landowner or the landowner's representative by certified mail that noxious weeds were found on the property and shall seek voluntary compliance from the landowner or landowner's representative with the district noxious weed management program.

(ii) The notice must contain the language specified in this section.

(iii) If ownership of the land is in question or the board believes it is advisable, the board or the board's agent may also post in a conspicuous place on the property a dated order providing notice that noxious weeds have been found on the property and directing the landowner or landowner's representative to comply with the district noxious weed management program.

(b) If the board or the board's agent is unable to obtain voluntary compliance with the district noxious weed management program by the landowner or



landowner's representative within 10 days after the notification or within 10 days after posting the notice under subsection (2)(a), the landowner is considered to be in noncompliance and is subject to appropriate control measures pursuant to 7-22-2124 or, at the discretion of the board of county commissioners, a civil penalty as established by the board following a public hearing after providing notice as required in 7-1-2121.

(c) (i) Within 10 days after the board has issued a notice to comply with the noxious weed management program, the landowner or landowner's representative may file a request for a hearing before the board if the landowner or landowner's representative disagrees with the noxious weed management control measures proposed to be taken by the board. (ii) If the landowner's objection to the board's action remains after the hearing, the landowner has 10 days to appeal the board's decision to the district court having jurisdiction in the county in which the property is located.

(d) If a request for a hearing has been filed pursuant to subsection (2)(c), the board or the board's agent may not take any action to control the noxious weeds until after the hearing and authorization from the board or the court.

(e) If the board imposes the civil penalty authorized in subsection (2)(b) and a hearing is requested in court, the penalty may be sought for each year or portion of a year during which the landowner is not in compliance with the district noxious weed management program.

(3) A landowner is considered to be in compliance if the landowner submits and the board accepts a proposal to undertake specified control measures and remains in compliance as long as the landowner performs according to the terms of the proposal. The proposal must include a requirement that the landowner or landowner's representative notify the board as measures in the proposal are taken. If the measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must be in writing.

(4) In accepting or rejecting a proposal, the board shall consider the economic impact on the landowner and the landowner's neighbors, practical biological and environmental limitations, and alternative control methods to be used.

(5) If a court issues an order approving a board's actions, the court retains jurisdiction over the matter:

(a) until the actions specified in the weed management plan or court order are complete;

(b) for the length of time specified in the order; or

(c) for 5 years if the order does not specify a time limit.

1 (6) The department shall provide boards with a uniform notification form that must  
2 be used when notifying landowners of potential noncompliance with this part. The  
3 form must:

- 4 (a) list the noxious weeds found on the property;
- 5 (b) provide the legal description of the property;
- 6 (c) provide the address of the property, if available;
- 7 (d) state the fact that the presence of the weeds violates state law and that  
8 the landowner has 10 days after mailing of the notice to contact the board or  
9 its agent;
- 10 (e) provide the address and phone number for the board or its agent;
- 11 (f) notify the landowner of the landowner's:
  - 12 (i) responsibility to submit a weed management proposal; and
  - 13 (ii) right to request a hearing to contest the finding of noncompliance,  
14 including the timeframe for making the request; and
- 15 (g) specify the actions the board may take if the landowner fails to remove  
16 the weeds, including but not limited to the anticipated costs of destroying the  
17 weeds, the 25% penalty allowed under 7-22-2124, and the board's intent to  
18 file a court action to impose a civil fine that may become a lien upon the  
19 property.  
20

21 **7-22-2124. Destruction of weeds by board -- court order -- deposits.**

22 (1)

23 (a) The board may seek a court order to enter upon the landowner's land and  
24 institute appropriate noxious weed control measures, which may include  
25 contracting with a commercial applicator pursuant to subsection (1)(c)(iii),  
26 if:

27 (i) the landowner or the landowner's representative does not take  
28 corrective action within the time specified in 7-22-2123(2);

29 (ii) a proposal is not made and accepted as provided in 7-22-2123(3);  
30 and

31 (iii) the board does not receive a formal objection or a request for a  
32 hearing.

33 (b) If the board decides to seek a civil penalty under 7-22-2123(2)(b) instead  
34 of taking the control measures, the board shall obtain judicial approval from  
35 the court for the penalty.

36 (c) (i) After taking action pursuant to subsection (1)(a) or obtaining a court  
37 order and instituting appropriate noxious weed control measures, the board



1 shall submit a bill to the landowner that covers the costs of the weed control  
2 measures and contains a penalty not exceeding 25% of the total cost  
3 incurred. The bill must itemize the hours of labor, cost of material,  
4 equipment time, legal fees, and court costs or provide an invoice from a  
5 commercial applicator if the board contracted for weed control pursuant to  
6 subsection (1)(c)(iii). The board shall provide a copy of the bill, including the  
7 penalty, to the county clerk and recorder.

8 (ii) Labor, material, and equipment used by the board in instituting  
9 appropriate noxious weed control measures must be valued at the current  
10 rate paid for commercial management operations in the district. The bill  
11 must reflect actual legal fees and court costs incurred by the board. The bill  
12 submitted to the landowner under subsection (1)(c)(i) must specify and  
13 order a payment due date of 30 days from the date the bill is sent.

14 (iii) The board may enter into an agreement with a commercial applicator, as  
15 defined in 80-8-102, to destroy the weeds. The commercial applicator shall  
16 carry all insurance required by the board.

17 (d) All penalties collected pursuant to this section are in addition to other  
18 penalties authorized under this chapter and must be credited to a noxious  
19 weed fund created under 7-22-2141.

20 (2) If a landowner who received an order to take corrective action requests an  
21 injunction or stay of the corrective action in district court within 10 days of receipt  
22 of the order, the board may not institute control measures until the matter is finally  
23 resolved, except in case of an emergency. If the board declares an emergency and  
24 institutes appropriate measures to control the noxious weeds, the landowner who  
25 received the order under 7-22-2123(2)(a) is liable for costs as provided in  
26 subsection (1) of this section only to the extent determined appropriate by the  
27 board, the board of county commissioners, or the court that finally resolves the  
28 matter.

29 **7-22-2148. Payment of weed control expenses -- tax liability -- lien.**

30 (1) (a) The expenses incurred by the board for noxious weed control undertaken  
31 pursuant to 7-22-2124 must be paid by the county out of the noxious weed fund.

32 (b) If the sum to be repaid by the landowner billed under 7-22-2124 is not repaid on  
33 or before the date due, the county clerk shall certify the amount due, with the  
34 description of the land to be charged, and shall enter the amount on the assessment  
35 list of the county as a special tax on the land. If the land is exempt from general  
36 taxation for any reason, the amount due and to be repaid may be recovered by  
37 direct claim against the landowner and collected in the same manner as personal  
38 taxes.

- 1 (c) All amounts collected pursuant to subsection (1)(b) must be deposited in the  
2 noxious weed fund.
- 3 (2) If a civil penalty is imposed under 7-22-2123, the penalty is, until paid in full, a  
4 lien in the amount of the penalty on the infested parcel of the property that lies  
5 within the district and belongs to the landowner on whom the penalty was imposed.

# Non-Compliance Flow Chart

